

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.893 OF 2005
IN
EXECUTION APPLICATION NO.218 OF 2005
IN
SUMMARY SUIT NO.3810 OF 2001

Smt.Rehana Khan	Plaintiff
V/s.	
Raj @ Rajesh S. Nanavati	Defendant
And	
Smt.Sumitra S. Nanavati	Applicant

Mr.R.M. Kadam with Mr.T.S. Patwardhan for the Applicant.
Mr.S.R. Saudagar for the Plaintiff.

CORAM : S.J. VAZIFDAR, J.
DATED : 17TH JANUARY, 2006.

P.C. :

1. The Chamber Summons is filed by the Applicant to set aside the execution application and the attachment levied pursuant thereto in respect of the residential premises and the moveable properties therein. The execution was levied pursuant to and in respect of a decree dated 23rd September, 2003 against the Defendant in the sum of over Rs.60.00 lacs.

2. The judgment debtor is the Applicant's son. The premises admittedly do not belong to either the judgment debtor or the Applicant. The only question is whether the judgment debtor or the Applicant is the

tenant of the said premises.

3. At the outset it is pertinent to note that the Plaintiff - judgment creditor has not produced any evidence whatsoever to indicate that the judgment debtor is the tenant in respect of the said premises.

4. The Applicant has produced adequate evidence to indicate that she is the sole tenant in respect of the said premises. The rent receipts stand in her name. In fact the Applicant's husband was the tenant in respect of the said premises. After he expired on 16th September, 1998, the rent receipts were transferred in the sole name of the Applicant. The Applicant has paid the rent throughout.

5. It is pertinent to note that the ration card also stands only in the name of the Applicant. This is only an additional fact in support of the Applicant's case.

6. The electricity bills were also in the name of the Applicant's husband. There is nothing to suggest that upon the demise of the Applicant's husband, the tenancy was transferred to or in favour of the Defendant - judgment debtor.

7. In this view of the matter, it is not necessary to consider the point under Section 60 of the Code of Civil Procedure raised on behalf of the Applicant.

8. The Chamber Summons is made absolute in terms of prayers (a) and (b). There shall be no order as to costs.